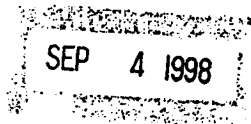




**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE

Northwest Region  
7600 Sand Point Way NE  
Seattle, Washington 98115-0070



Ann Badgely  
Director  
Region 1  
U.S. Fish and Wildlife Service  
911 N.E. 11th Ave.  
Portland, Oregon 97232-4181

Dear Ms Badgely:

The Fish and Wildlife Service (FWS), the Bureau of Indian Affairs, and the National Marine Fisheries Service (NMFS) are in consultation under the Endangered Species Act on their participation under the Columbia River Fish Management Plan (CRFMP) in the planning and determination of fall fisheries in the Columbia River mainstem and tributaries. On June 10, 1998, the FWS transmitted to NMFS the biological assessment (BA) prepared by the Technical Advisory Committee (TAC) of the CRFMP. Discussions among all the U.S. v. Oregon parties have narrowed down the range of proposed Columbia River fall fisheries considered in the BA.

NMFS is proceeding to complete the consultation by issuing a biological opinion, pursuant to ESA section 7(a)(2) and 50 C.F.R. section 402.14(h), in accordance with the U.S. v. Oregon court's September 3, 1998, Opinion and Order, on an expedited basis. ESA section 7(d) provides:

"After initiation of consultation required under subsection (a)(2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section."

At today's meeting of the Columbia River Compact, the Compact considered fisheries that have occurred to date and treaty fisheries and non-treaty fisheries proposed for the week of September 6-12. The TAC estimated that the harvest rates of these fall fisheries, cumulatively through September 12 would not exceed 11.6% for wild Snake River fall chinook, 3.7% for wild A steelhead, and 6.9% for wild B steelhead.

During the course of the consultation, the NMFS has given the parties indications of what the ESA may require. In an April 18, 1998 letter to the tribes, I wrote that our reasoning

"suggests that B-run harvest rates should be limited to a maximum on the order of 5-7%



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for all mainstem fisheries, representing an appropriate biological response while still providing some opportunity for minimized fisheries.”

On August 21, 1998, Bill Robinson, my Assistant Regional Administrator, testified to the Compact that the proposal before the Compact for fisheries through approximately September 5, which were expected to have a wild B-steelhead impact of 5% or less, would in his opinion “probably not be likely to jeopardize any of the three listed Columbia River steelhead species.”

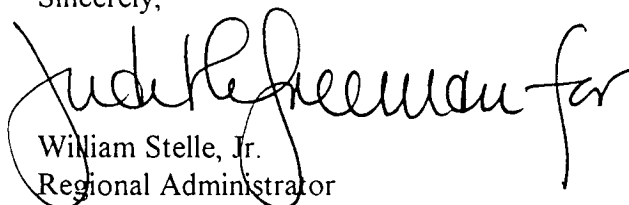
Based on these opinions and our preliminary analysis for the biological opinion, NMFS confirms that a total incidental harvest rate of 7% on wild B-steelhead in the fall fisheries is not likely to jeopardize any of the three listed steelhead populations.

Since the proposed fisheries through September 12, 1998 are not likely to jeopardize the listed steelhead, these fisheries do not constitute an “irreversible or irretrievable commitment of resources” which would have “the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative” under ESA section 7(d). A reasonable and prudent alternative to a proposed action which is likely to jeopardize is one that is authorized and consistent with the purpose of the proposed action, but is modified so that it will not jeopardize. The fisheries considered by the Compact through September 12 would have a cumulative harvest rate on wild B steelhead of less than 7% (estimate, 6.9%) and thus are not likely to jeopardize listed steelhead. Accordingly, carrying out of these fisheries would be consistent with reasonable and prudent alternatives, such as ceasing the fisheries after September 12.

In conclusion, NMFS has determined that authorizing the fisheries through September 12 would be within the scope of activities permitted to proceed during a consultation in accordance with section 7(d), and thus these limited fisheries would not violate the ESA.

I appreciate the hard work of all the parties in resolving this matter under difficult circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "William Stelle, Jr.", written over a circular stamp.

William Stelle, Jr.  
Regional Administrator

cc: Policy Committee Members  
Columbia River Compact